

Attachment M  
DRAFT Contract for Ad Agency Services

STATE OF TEXAS       )  
                                  )  
COUNTY OF BEXAR    )

**CONTRACT FOR  
ADVERTISING, MARKETING AND  
PUBLIC RELATIONS**

This CONTRACT is entered into by and between the CITY of San Antonio (hereinafter referred to as "CITY") acting by and through its CITY Manager pursuant to Ordinance No. \_\_\_\_\_, which was approved by City Council on \_\_\_\_\_, 2004, and \_\_\_\_\_ (hereinafter referred to as "AGENCY"), a \_\_\_\_\_ corporation, acting by and through duly authorized officials, WITNESSETH:

**I. PURPOSE**

- 1.1 The purpose of this CONTRACT is to state the terms and conditions under which AGENCY shall perform services as the official advertising, marketing and public relations AGENCY of CITY's Convention and Visitors BUREAU ("BUREAU"). Nothing in this CONTRACT is intended to constitute AGENCY as the legal agent of CITY.

**II. DEFINITIONS**

As used in this CONTRACT the following terms shall have the described meanings:

- 2.1 "Tearsheet" – a sample of the publication page in which advertisement ran as proof of performance.
- 2.2 "Cooperative program" – partnerships between the CVB and other private/public entities that provide effective and attractive consumer and trade cooperative advertising, promotional, and other marketing opportunities that enhance and extend awareness and exposure of the San Antonio vacation/convention message.
- 2.3 "Traffic" – distribution of final art or broadcast spots (TV, radio or print) sent to the appropriate publications and vendors, for publication or airing.
- 2.4 "Layouts" – overall placement of creative elements (picture, text, logo, etc.) in a print ad, direct mail package, or other collateral piece.
- 2.5 "Value-added merchandising" – anything given to the client by the media vendor that is over and above the purchased media.

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- 2.6 “Blended Labor Rates” – average of all hourly rates charged per department within the agency.
- 2.7 “Advertising response fulfillment programs” – tracking and mailing visitor information packets to inquiries made via phone, fax, letter or internet requests.
- 2.8 “Advertising responses” – consumer request for visitor information or collateral which was driven by the advertisement they saw.
- 2.9 “Media placement” – the buying of approved media; such as magazine, newspaper, radio or television space/time.
- 2.10 “Intellectual property” – patents, trademarks, copyrights, trade secrets, know-how, and all other proprietary information.
- 2.11 “Non-traditional media” – media other than radio, television, and print; including, but not limited to, Internet, interactive CD-ROM and other high-tech, computer and interactive television media.
- 2.12 “AGENCY’s Team” – those subcontractors listed in AGENCY’s proposal incorporated herein by reference.
- 2.13 “Overcharges” – including, but not limited to, billing errors, costs billed that are not permitted by contract, and any unsupported charges.

**III. SCOPE OF SERVICES**

The CITY reserves the right to perform, manage and/or administer any function referenced within the Scope of Services with CITY staff at any time during the resultant contract. This may alter the amount of overall funds and projects administered by the contract Agency and will be determined on a year-to-year basis.

- 3.1 With the cooperation, advice and written consent of the Director of SACVB, or through his/her staff with written authorization, the successful agency shall perform all requested marketing, research, strategic planning, creative concept and production, media planning, buying and evaluation, traffic and scheduling, public relations and all related accounting requirements. Agency services will result from approval by SACVB of concept of campaign and annual advertising program designed to augment the SACVB’s efforts in carrying out its goals and objectives. The selected agency may also be responsible for the solicitation, implementation and management of cooperative advertising initiated by the SACVB. Cooperative advertising shall be performed under the auspices of SACVB.
- 3.2 All services provided under the resultant contract shall be performed in conformance with generally accepted industry standards that are usual and customary between a client and an advertising agency in such relationships. No work shall be undertaken and no expenditure made for reimbursement hereunder unless the concept and program have

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been approved in writing by SACVB. Such approval may only be given by the Director of SACVB or his/her designee.

- 3.3 Agency shall meet with SACVB at such times and places, and in such duration, as may be requested by SACVB for the purpose of carrying out SACVB initiatives.
- 3.4 Agency shall perform all services set forth in the Contract, the City's Request for Proposal and Agency's proposal. The Contract shall incorporate, via exhibits, the Request for Proposal and the Agency's Proposal. Should there be any conflict between the language of the Contract, Request for Proposal, or Agency's Proposal, then the order of priority shall be Contract, Request for Proposal, and then the Agency's proposal.
- 3.5. Work closely with the Director of SACVB or her/his designee and appropriate City staff to perform any and all related tasks required by City in order to fulfill the purposes of this Scope of Services.
- 3.6. The AGENCY shall also:
  - a. Study SACVB's products and services and analyze SACVB's current and potential markets, as well as consider new objectives and strategies;
  - b. Employ in SACVB's behalf agency's knowledge of the available media and means which can profitably be utilized to advertise SACVB's products and services;
  - c. Prepare, when requested by SACVB, preliminary plans for the proper advertising of SACVB's products and services, and formulate and recommend a definite plan(s) for SACVB's advertising program;
  - d. Prepare layouts and, when approved, complete finished comprehensive layouts and prepare all actual final production materials to be used in all types of advertisements;
  - e. Prepare cost schedules and project sheets for advertising expenditures and other related costs and secure SACVB's approval of all expenditures with regard to SACVB's advertising by submitting pre-production estimates;
  - f. Exercise its best efforts, in conformance with standard industry advertising practices, to purchase or produce for SACVB that quality of artwork, engravings, electrotypes, printed matter and other collateral materials as may be required by SACVB and purchase same at the most advantageous rates available in the commercial advertising market;
  - g. Negotiate and contract with advertising media and others, for and in connection with SACVB's advertising, at the most advantageous rates available in the commercial advertising market;
  - h. Monitor and review insertions of advertisements in publications, displays, broadcasts and other advertising media used to such a degree as is the custom by commercial advertising agencies. The agency shall check such items as date of

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appearance, position of ad, size, mechanical reproduction, and any other related factors and furnish SACVB with proof of the placement and running of said ads by providing tearsheets with date of insertion, or other evidence of placement as approved by Director of SACVB;

- i. Prepare radio and/or television commercials upon request by SACVB and render the necessary supervisory services in connection therewith, and, in the case of programs, shall render the necessary supervisory services in connection with such programs;
- j. Work with SACVB's Public Relations department to strategize and implement public relation programs to further the SACVB's goals;
- k. Prepare Internet and nontraditional advertising upon request by the SACVB and render the necessary supervisory services in connection therewith;
- l. Track the effectiveness of advertising and marketing campaigns administered by agency including return on investment, when possible;
- m. Maintain internal procedures which ensure budget control, prompt billing and quality control, including but not limited to auditing invoices for space, time, preparation and services;
- n. Retain custody of SACVB's property and exercise its best efforts, when deemed necessary by SACVB or agency, to obtain return of the property from third parties;
- o. Assign and aid in the prosecution, application, registration, and defense of all applicable intellectual property.
- p. Provide needed account service, consultation and regular contact to ensure prompt completion of projects, including but not limited to dedicating at least one full time Account Executive;
- q. Provide monthly status reports, or as otherwise requested by SACVB, to SACVB updating the progress of all advertising projects;
- r. Provide monthly budget spreadsheets detailing all billings for each project;
- s. Track agency hours by large project and provide quarterly spreadsheets notating all hours for each project;
- t. Procurement and management of subcontracts for SACVB services, such as, but not limited to fulfillment, telemarketing, and print/binding functions;
- u. Manage and track advertising response fulfillment calls and response pieces mailed, and report same to SACVB on a monthly basis or as otherwise requested by SACVB.

#### **IV. CONTINGENT ADDITIONAL SERVICES**

- 4.1 With the consent of both BUREAU Director and AGENCY, other CITY departments may utilize AGENCY's services in accordance with the terms and conditions of this CONTRACT. Any such request shall be put in writing and outline the parameters of the requested services and the time frame for completion.
- 4.2 Such contingent additional services may be effected by any CITY department forwarding the approved request as set forth in 4.1 to AGENCY. Pursuant to the terms of this CONTRACT, AGENCY shall coordinate with BUREAU to determine that such additional services will not impede any ongoing projects for BUREAU. AGENCY must submit copies of all signed production cost estimates and invoices for such additional services to BUREAU for its files.

#### **V. EXCLUSIVITY**

- 5.1 CITY shall not be obligated to advertise or promote any product or service exclusively through AGENCY.
- 5.2 AGENCY agrees not to represent any local political campaigns or any party that is involved in any local political issue, any convention and visitors bureau or similar tourism organization, or hospitality industry organization during the tenure of this CONTRACT without prior written consent of BUREAU.
- 5.3 AGENCY agrees to immediately notify the Director of BUREAU when, to the knowledge of AGENCY through the exercise of reasonable due diligence, its services have been requested or engaged by firms or individuals who have a contract with CITY or are seeking a contract with CITY through a formal Request for Proposals, Requests for Bids, or Request for Qualifications process.
- 5.4 AGENCY Loyalty. AGENCY shall render loyalty and allegiance to CITY and maintain confidences in relation to the advertising of the products covered by this CONTRACT and BUREAU's business and other activities.

#### **VI. COORDINATION WITH CITY**

- 6.1 AGENCY's Team shall be comprised of only those subcontractors which are approved in writing by the Director of BUREAU. No additions, deletions or substitutions to AGENCY's Team may be made without the written approval of Director of BUREAU and the Director of Economic Development for CITY.
- 6.2 AGENCY must submit a written estimate and obtain written approval by the Director of BUREAU or his or her designee prior to:
  - (a) incurring time or expenses on any concept or program for BUREAU;

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- (b) contracting with any member of AGENCY's Team or any other subcontractor or third party for any services within the Scope of Services;
  - (c) placing any advertisement of CITY in any advertising medium; and,
  - (d) incurring liability to a third party for any service including, but not limited to, artwork, conceptual design, or printed matter.
- 6.3 BUREAU reserves the right to refuse to approve any estimate as referred to in 6.2.
- 6.4 Unless otherwise approved by BUREAU all third party services shall be competitively bid when applicable. A minimum of three bids or proposals shall be secured whenever possible. When requested, AGENCY shall submit copies of bids or proposals, with AGENCY recommendation, upon submission of estimate to BUREAU for BUREAU approval.

**VII. TERM OF AGREEMENT**

- 7.1 Unless otherwise terminated as provided for in Article XVI, the term of this CONTRACT shall be for a three (3) year period, beginning \_\_\_\_\_, 2004, with two (2) additional two (2) year renewal options at the sole discretion of City Council.

**VIII. PERFORMANCE CRITERIA**

- 8.1 In determining whether to renew this CONTRACT, in addition to AGENCY meeting the Scope of Services set forth in Article III of this Contract, CITY may consider the following performance based criteria:
- a. ability of AGENCY in assisting BUREAU to meet and/or exceed Department performance measures in place each year for advertising responses;
  - b. obtaining a negotiated minimum of at least \_\_\_\_\_ % per CONTRACT year in value-added merchandising for purchased media;
  - c. the consistent use of AGENCY's account team, with at least one Account Executive dedicated to BUREAU account, for the duration of the CONTRACT, as outlined in the qualification data of AGENCY's proposal;
  - d. whether AGENCY, AGENCY's Team, and AGENCY's subcontractors meet deadlines and submit required reports in a timely and expedient manner; and
  - e. AGENCY's quarterly reports on how AGENCY is attaining these performance criteria.
- 8.2 The performance criteria outlined in Section 8.1 above is a non-exclusive list and CITY may consider other factors in the determination for renewal of this CONTRACT.

**IX. AGENCY FEES AND BILLINGS TO CITY**

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- 9.1 Budgeting. At the beginning of each fiscal year, BUREAU shall determine the budget and the services to be provided by AGENCY for that fiscal year. Those services shall include the services contained in this CONTRACT and any additional services, such as printing, binding and postage. BUREAU reserves the right to adjust the budget during the term of this CONTRACT.
- 9.2 Monthly Retainer Fee. After BUREAU has completed the requirements in 9.1, BUREAU and AGENCY will meet and confer to discuss the budget for all projects by BUREAU division for the initial twelve months of this CONTRACT and agree upon a monthly retainer fee. This budget will be agreed upon in writing between BUREAU Director and AGENCY. The monthly retainer fee will be the estimated AGENCY labor services for the scope of services for that twelve month period divided by twelve. The monthly retainer fees paid shall be applied against actual fees and expenses as described in 9.3 of this Agreement. The procedure described herein shall be followed for each twelve month period thereafter during the term of this CONTRACT.
- 9.3 Reconciliation. The budget agreed upon between BUREAU and AGENCY as described in 9.2 shall be reconciled every quarter for the first year of this CONTRACT and thereafter as agreed to by the parties. Such reconciliation shall consist of AGENCY sending a report to BUREAU which outlines actual fees and expenses for the prior quarter, supported by AGENCY time sheets which shall show hours by department for each BUREAU division, and the documentation for all expenses set forth in 9.4 and 9.6. All time charges shall be supported by accurate time records maintained by AGENCY. In the event that the actual AGENCY hours for the prior quarter exceed the monthly retainer fees paid by CITY, CITY shall not be obligated to pay any additional fees except as agreed to as provided for herein. In the event that the actual AGENCY hours are less than the monthly retainer fees paid by CITY, the parties agree to meet every six months to agree upon an adjusted monthly retainer. Any agreement to adjust the monthly retainer fee shall be in writing and approved by the Director of BUREAU.
- 9.4 Third Party Invoices. Invoices submitted by AGENCY to CITY covering expenditures or commitments made by AGENCY on BUREAU's behalf shall be accompanied by copies of the invoices submitted by third parties to AGENCY, together with tearsheets if such expenditures or commitments are for media placement. Media invoices must include insert orders. CITY and BUREAU reserve the right to inspect actual media invoices during the term of this CONTRACT upon reasonable request by CITY or BUREAU. If tearsheets are not available when the invoices are submitted, AGENCY shall forward the tearsheets as soon thereafter as possible with reference to the invoice numbers to which they relate.
- 9.5 No Media Commissions or Service Charges. All media placement, all printing, binding and production services, as well as any other outside vendor or subcontractor costs, shall be billed at actual cost only and without any added commission or other service charges.
- 9.6 Media Billing Errors. If scheduled advertising does not run, ran incorrectly, or if there

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exists any other problem or media billing error, AGENCY shall immediately advise CITY and credit or appropriately adjust CITY's account on the next monthly billing invoice following the discovery of said media billing problem or error.

- 9.7 AGENCY Fees. AGENCY shall charge CITY Blended Labor Rates for all services provided to BUREAU under the following categories:

Creative Department Rate \$\_\_\_\_\_ per hour

Production Department Rate \$\_\_\_\_\_ per hour

Research Department Rate \$\_\_\_\_\_ per hour

Public Relations Department Rate \$\_\_\_\_\_ per hour

Media Department Rate \$\_\_\_\_\_ per hour

Account Service Department Rate \$\_\_\_\_\_ per hour

AGENCY agrees that AGENCY will use appropriate levels of experienced personnel for the services under this CONTRACT in the above areas as determined by BUREAU. Additionally, the services of AGENCY's CEO shall be provided to BUREAU at no charge during the term of this CONTRACT.

- 9.8 AGENCY Overhead Charges. AGENCY shall not charge CITY for any usual administrative copying costs or fax charges without the prior written approval of BUREAU. After obtaining written approval by the Director of the BUREAU, AGENCY may charge CITY for large volume copying costs and reasonable travel expenses. AGENCY agrees to work with BUREAU to obtain the most advantageous rates for any other expenses.
- 9.9 Travel. CITY will reimburse AGENCY only for travel authorized or requested by BUREAU. Said reimbursement shall include only reasonable and necessary expenses incurred. Travel expenses shall mean coach airfare and shall not include first class, business class or upgrade charges. All travel expenses must be reasonable and necessary to fulfill AGENCY's services under this CONTRACT and must be supported by appropriate documentation. Additionally, AGENCY shall not bill CITY for any hourly fees for personnel solely for travel time.
- 9.10 Media Research Expenses. AGENCY shall not bill CITY for obtaining any services or reports from standard research sources, including without limitation, Competitive Media Reporting, Nielsen, Arbitron, Simmons, and Broadcast Advertisers Reports.
- 9.11 CITY agrees to pay AGENCY's invoices within thirty (30) days of receipt. All invoices shall have pre-production approval and be accompanied by a copy of the approved cost estimate, with the exception of the Monthly Retainer Fees as agreed to in 9.2 and media placement as agreed to in 9.4. Additionally, all invoices shall include all supporting



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documentation as it relates to reimbursable charges and third party invoices as outlined in 9.2.

**X. PROOF OF PAYMENT**

- 10.1 AGENCY shall have available proof of payment to media and other third parties in respect to all work and/or services rendered for, or on behalf of BUREAU, which proof may be inspected upon reasonable request by BUREAU.

**XI. PROPERTY OF CITY**

- 11.1 All plans for advertising, preliminary sketches, layouts, copy, "commercial" material, films, photographs, drawings, transcriptions, ideas, designs, processes, methods, products, discoveries, inventions, improvements, trade secrets, programs writings, copyrights, trademarks, business methods or concepts, plans, projections and other similar items (collectively, the "Intellectual Property") that was created, conceived, reduced to practice or made by AGENCY during the regular course of or arising out of this CONTRACT, whether alone or in conjunction with others, subject to any third party licensed rights, shall be promptly disclosed to, and become the exclusive property of CITY. AGENCY hereby assigns to CITY all worldwide rights to the Intellectual Property, including all copyrights thereto and all rights under the Visual Artists' Rights Act of 1990. AGENCY further agrees to develop and execute any documents, give all oaths or testimony, and otherwise give all assistance deemed by CITY to be necessary or desirable to secure, maintain, or defend CITY's ownership of the Intellectual Property.
- 11.2 To comply with Section 11.1, AGENCY is required to set out in its contracts with other agencies and any other party who is not employed by AGENCY or not considered to be a "work made for hire" as provided under the Copyright Act, to assign all ownership and rights, including but not limited to copyrights and all rights under the Visual Artists' Rights Act of 1990, in the created Intellectual Property to CITY. AGENCY is further required to give all assistance deemed by CITY to be necessary or desirable to secure, maintain, or defend CITY's ownership of the Intellectual Property.
- 11.3 The Public Information Act, Government Code Section 552.021, requires the CITY to make certain information available to the public. Under Government Code Section 552.002(a), public information means information that is collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business: 1) by a governmental body; or 2) for a governmental body and the governmental body owns the information or has a right of access to it. Therefore, if AGENCY receives inquiries regarding such documents within its possession, AGENCY shall, within twenty-four (24) hours of receiving such requests, notify the CITY and forward such requests to the CITY for disposition. Respondent shall not release any records created during the course of performance of the contract to any entity without CITY'S written permission.
- 11.4 AGENCY agrees to comply with all applicable federal, state and local laws, rules and regulations governing documents and ownership, access and retention thereof.

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- 11.5 AGENCY shall pay all royalties and licensing fees for the use of third party intellectual property. AGENCY agrees to indemnify and hold CITY harmless from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of copyrights, patents, materials and methods used in the project. AGENCY shall defend CITY against all suits for infringement of any Intellectual Property rights. Further, if AGENCY has reason to believe that the design, service, process or product specified is an infringement of the Intellectual Property rights of a third party, it shall immediately (within 24 hours) give such information to the CITY.

**XII. PROTECTION OF CITY AGAINST LOSS**

- 12.1 AGENCY shall endeavor to the best of its knowledge and ability to guard against any loss to CITY through the failure of media or through the failure of suppliers to execute properly their commitments.

**XIII. INDEMNIFICATION**

- 13.1 **AGENCY Covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, CITY and the elected officials, employees, officers, directors, and representatives of CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to matters arising from copyright, trade secret, trade dress, trademark, trade name, and/or patent infringement, and/or consequential damages that others may allege to suffer as a result of the use by AGENCY or its designee of copyrighted, trade secret, trade dress, trademarked, trade named, or patented materials, personal injury or death and property damage, made upon CITY, directly or indirectly arising out of, resulting from or related to AGENCY'S activities under this CONTRACT, including any acts or omissions of AGENCY, any agent, officer, director, representative, employee, consultant or subcontractor of AGENCY, and their respective officers, agents, employees, directors and representatives while in the exercise or performance of the rights or duties under this CONTRACT, all without, however, waiving any governmental immunity available to CITY under Texas Law and without waiving any defenses of the parties under Texas Law. Additionally, AGENCY covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, CITY and the elected officials, employees, officers, directors, and representatives of CITY, individually or collectively, from and against any liability or claims of conspiracy from or related to AGENCY's activities in connection with this CONTRACT. The provisions of this INDEMNIFICATION are solely for the**

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benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. AGENCY shall promptly advise CITY in writing of any claim or demand against CITY or AGENCY known to AGENCY related to or arising out of AGENCY'S activities under this CONTRACT and shall see to the investigation and defense of such claim or demand at AGENCY'S cost. CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving AGENCY of any of its obligations under this paragraph.

- 13.2 It is the EXPRESS INTENT of the parties to this contract that the INDEMNITY provided for in this Article (Article 13), is an INDEMNITY extended by AGENCY to INDEMNIFY, PROTECT and HOLD HARMLESS CITY from the consequences of CITY's OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this Article SHALL APPLY only when the NEGLIGENT ACT of CITY is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of CITY is the sole cause of the resultant injury, death, or damage. AGENCY further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF CITY AND IN THE NAME OF CITY, any claim or litigation brought against CITY and its elected officials, employees, officers, directors and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.
- 13.3 The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.
- 13.4 Agency shall advise the CITY in writing within 24 hours of any known claim or demand against the CITY or Agency, and related to or arising out of Agency's activities under this Contract.

**XIV. INSURANCE REQUIREMENTS**

- 14.1 Prior to the commencement of any work under an Agreement awarded pursuant to this RFP, the selected Respondent shall furnish an original completed Certificate(s) of Insurance to the San Antonio Convention & Visitors Bureau, Attn: Steve DeLaHaya, P.O. Box 2277, San Antonio, TX 78298, which shall be clearly labeled "Request for Proposal – Advertising Agency Services" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon, containing all required information referenced or indicated thereon. The original Certificate(s) or form must have the agent's original signature,

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including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the City. The City shall have no duty to pay or perform under said Agreement until such Certificate shall have been delivered to the San Antonio Convention & Visitors Bureau, Attn: Steve DeLaHaya, and no officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

- 14.2 The City reserves the right to review these insurance requirements during the effective period of the Agreement and any extension or renewal thereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager, based upon changes in statutory law, court decisions or circumstances surrounding the Agreement, but in no instance will City allow modification whereupon City may incur increased risk.
- 14.3 Respondent's financial integrity is of interest to the City, and, therefore, subject to Respondent's right to maintain reasonable deductibles in such amounts as are approved by the City, Respondent shall obtain and maintain in full force and effect, for the duration of the Agreement, and any extension thereof, at Respondent's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to the City.

1. Workers' Compensation ** Employers' Liability **	Statutory \$1,000,000/\$1,000,000/\$1,000,000
2. Commercial General (public) Liability Insurance to include coverage for the following: a. Premises operations b. Independent contractors* c. Products/completed operations d. Personal Injury e. Contractual Liability f. Explosion, collapse, underground g. Broad form property damage, to include fire legal liability	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
3. Professional Liability (Claims Made Form)	\$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission in professional services.
4. Commercial Crime, to include Employee Dishonesty Coverage	\$3,000,000
* If Applicable	

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** Alternate Plans Must Be Approved by Risk Management
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- 14.4 The City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision or modification of particular policy terms, conditions, limitations or exclusions, except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies. Respondent shall be required to comply with any such requests and shall submit a copy of the replacement Certificate of Insurance to City at an address provided by City within ten (10) days of the requested change. Respondent shall pay any costs incurred resulting from said changes.
- 14.5 Respondent agrees that, with respect to the above-required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:
- Name the City and its officials, employees, volunteers and elected representatives as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
  - Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
  - Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the City.
- 14.6 When there is a cancellation, non-renewal or material change in coverage, which is not made pursuant to a request by City, Respondent shall notify the City of such and shall give such notices not less than thirty (30) days prior to the change, if Respondent knows of said change in advance, or ten (10) days notice after the change, if the Respondent did not know of the change in advance. Such notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the City at the following addresses:
- |  |   |
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| City of San Antonio<br>Risk Management<br>Request for Proposal<br>Advertising Agency Services<br>P. O. Box 839966<br>San Antonio, Texas 78283-3966 | City of San Antonio<br>Convention & Visitors Bureau<br>Request for Proposal<br>Advertising Agency Services<br>P.O. Box 2277<br>San Antonio, Texas 78298 |
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- 14.7 If Respondent fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the City may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due

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under the Agreement; however, procuring of said insurance by the City is an alternative to other remedies the City may have and is not the exclusive remedy for failure of Respondent to maintain said insurance or secure such endorsement. In addition to any other remedies the City may have upon Respondent's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Respondent to stop work under the Agreement, and/or withhold any payment(s) which become due to Respondent thereunder until Respondent demonstrates compliance with the requirements hereof.

- 14.8 Nothing herein contained shall be construed as limiting in any way the extent to which Respondent may be held responsible for payments of damages to persons or property resulting from Respondent's or its subcontractors' performance of the work covered under the Agreement. It is agreed that Respondent's insurance shall be deemed primary with respect to any insurance or self-insurance carried by the City for liability arising out of operations under this contract.

**XV. EXAMINATION OF AGENCY RECORDS**

- 15.1 CITY reserves the right to conduct examinations, during regular business hours and following notice to AGENCY by BUREAU, of the books and records related to the CONTRACT with CITY (including such items as contracts, paper, correspondence, copy, books, accounts, billings and other information related to the performance of AGENCY's services hereunder) no matter where books and records are located. CITY also reserves the right to perform any and all additional audits relating to AGENCY's services, provided that such audits are related to those services performed by the AGENCY for CITY. These examinations shall be conducted at the offices maintained by AGENCY if AGENCY maintains an office in Bexar, County Texas; however, if AGENCY does not maintain an office in Bexar County, then AGENCY shall be responsible for delivering all such books and records related to this CONTRACT to the BUREAU or a place identified its Director.
- 15.2 All applicable records and accounts of AGENCY, together with all supporting documentation, shall be preserved in Bexar County, Texas or any other place agreed to by the CITY, by AGENCY throughout the term of this CONTRACT and for four (4) years after the termination of this CONTRACT. During this time, CITY may require that any or all of such records and accounts be submitted for audit to CITY or to a Certified Public Accountant selected by CITY. In the event AGENCY fails to furnish CITY any documentation required hereunder within ten (10) days following the written request for same, then AGENCY shall be in default of this CONTRACT.
- 15.3 Should CITY discover errors in internal controls or in record keeping associated with the scope of work covered by this contract, AGENCY shall correct such discrepancies either upon discovery or within a reasonable period of time, not to exceed sixty (60) days after discovery and notification by CITY to AGENCY of such discrepancies. AGENCY shall inform CITY in writing of the action taken to correct such audit discrepancies

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- 15.4 If it shall be determined as a result of such audit that AGENCY has overcharged CITY hereunder, then such overcharges shall be immediately refunded to CITY and become due and payable with interest at the maximum legal rate under applicable law from the date the CITY paid such overcharges. In addition, if the audit determined that there were overcharges of more than two percent (2%) of the greater of the budget or payments to AGENCY for the year the discrepancy occurred, and CITY is entitled to a refund as a result of such overcharges, then AGENCY shall pay for all of the costs associated with such audit.

**XVI. TERMINATION OF AGREEMENT**

- 16.1 Termination without cause. This Agreement may be terminated by either party upon 120 days written notice, which notice shall be provided in accordance with Article XXIII. Notice.
- 16.2 Termination with cause. Should AGENCY fail to fulfill in a timely and proper manner its obligations under this CONTRACT, CITY shall thereupon have the right to terminate this CONTRACT by sending written notice to AGENCY of such termination and specifying the effective date thereof, which shall be at least thirty (30) days following the date of notice. In addition, CITY may terminate this CONTRACT in the event any future budget does not appropriate funding for advertising, marketing and public relations purposes. Notwithstanding any other remedy provided herein or provided by law, CITY may delay, suspend, limit or cancel rights, privileges or payments due to AGENCY for failure to comply with this CONTRACT. Specifically, CITY may withhold payments in cases where it determines that AGENCY is not in compliance with this CONTRACT.
- 16.2 Upon termination of this CONTRACT, AGENCY shall transfer and make available to CITY or its authorized representative all property and materials in AGENCY's possession or control belonging to CITY, all information regarding BUREAU's advertising, and all documents and files, including administrative files relating to CITY or BUREAU or the services provided under this CONTRACT. Additionally, if approved by third parties in interest, AGENCY shall assign to BUREAU all reservations, contracts and arrangements with advertising media or other for advertising space, time, materials, or services yet to be used, and all rights and claims thereto and therein, and no extra compensation shall be paid to AGENCY for its service in connection with this transfer. Upon such transfer, BUREAU shall assume all the obligations of AGENCY which BUREAU authorized it to incur to third parties and shall release AGENCY therefrom. If any third party in interest fails to approve the transfer to CITY by AGENCY of any reservation, contract, or arrangement with said third party, then AGENCY shall fulfill its obligation under such reservation, contract or arrangement and CITY shall fulfill its obligation to AGENCY pertaining to such reservation, contract, or arrangement as if this agreement had not been canceled.
- 16.3 Upon completion of this CONTRACT, any uncompleted work previously authorized by BUREAU, either specifically or as part of a plan, will be paid for, to the extent completed, by CITY in accordance with the provisions of this agreement and shall become the property of BUREAU.

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- 16.4 The rights, duties and responsibilities of AGENCY and BUREAU shall continue in full force and effect during the notice period, including preparing for and placing any advertising which BUREAU has authorized AGENCY to place.
- 16.5 Billing Upon Termination. Within thirty days after termination of this CONTRACT, AGENCY shall bill CITY for all amounts not previously billed or paid and for which AGENCY is entitled to claim reimbursement from CITY under the terms of this agreement. Subject to the provisions of Articles XV and XVI, CITY shall then pay such amounts to AGENCY. In no event shall CITY be liable for charges submitted to CITY after this thirty day time period. AGENCY is to receive no compensation in connection with space, time, materials or services the payment for which shall become due to an advertising medium or others after the termination of this CONTRACT.

**XVII. NON-ASSIGNABILITY**

- 17.1 This is a professional services CONTRACT and the rights, duties, responsibilities and obligations of AGENCY are not assignable without the express written consent of CITY. CITY's consent may only be given by its CITY Council as evidenced by the passage of an ordinance.

**XVIII. CONFLICT OF INTEREST**

- 18.1 AGENCY acknowledges that it is informed that the City of San Antonio's City Charter prohibits contracts between CITY and any local public official, such as owner, officer or employee, and that the prohibition extends to an officer and employee of CITY agencies such as CITY owned utilities and CITY boards and commissions, and to contracts involving a business entity in which the official has a substantial interest, as defined by Texas law, if it is reasonably foreseeable that an action of the matter would confer an economic benefit on the business entity. AGENCY certifies, and this CONTRACT is made in reliance thereon, that neither it, its individual officers, employees or agents, nor any person having a substantial interest in this CONTRACT is an officer or employee of CITY or any of its agencies. AGENCY hereby certifies it has tendered to CITY a Disclosure Statement in compliance with CITY of San Antonio's Ethics Ordinance.

**XIX. ENTIRE AGREEMENT**

- 19.1 This CONTRACT, including its Exhibits, embodies the final and entire agreement of the parties hereto, superseding all oral or written agreements, previous and/or contemporaneous, agreements between the parties relating to matters in this CONTRACT. No other agreements, oral or otherwise, regarding the matters of this CONTRACT shall be deemed to exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereof, and executed by the parties hereto.

**XX. SEVERABILITY**



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- 20.1 If any clause or provision of this CONTRACT is held invalid, illegal, or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or Ordinances of the City of San Antonio, Texas, then, and in that event, it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and the remainder of this CONTRACT shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein. It is also the intention of the parties hereto that in lieu of each clause or provision of this CONTRACT that is invalid, illegal or unenforceable, there be added as part of the CONTRACT, a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

**XXI. LEGAL AUTHORITY**

- 21.1 The signer of this CONTRACT, AGENCY represents, warrants, assures and guarantees that he has full legal authority to execute this CONTRACT on behalf of AGENCY and/or CITY and to bind AGENCY and/or CITY to all the terms, condition., provisions and obligations herein contained.

**XXII. VENUE AND GOVERNING LAW**

- 22.1 Venue of any court action brought directly or indirectly by reason of this CONTRACT shall be in Bexar County, Texas. This CONTRACT shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Bexar County, Texas.

**XXIII. NOTICE**

- 23.1 Any notice required or permitted to be given under this CONTRACT shall be sufficient if given in writing and by Certified Mail, Return Receipt Requested, to CITY or to AGENCY at the addresses first set forth below or to any other address of which written notice of change is given.

**CITY**  
**Convention & Visitors Bureau**  
**City of San Antonio**  
**P.O. Box 2277**  
**San Antonio, Texas 78298-2277**

**AGENCY**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- 23.2 This CONTRACT shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and their assigns, except as otherwise expressly provided for herein.

**XXIV. CAPTIONS**

- 24.1 The captions contained in this CONTRACT are for convenience of reference only and in no way limit or enlarge the terms and conditions of this CONTRACT.

## **XXV. COMPLIANCE WITH SBEDA AND EEO POLICIES**

- 25.1 Consultant hereby acknowledges that it is the policy of the City of San Antonio to assist in increasing the competitiveness and qualifications of small (“SBE”), women (“WBE”), African American (“AABE”), and minority-owned business (“MBE”) enterprises in order to afford greater opportunities for obtaining and participating in contracts, related subcontracts, and leases and concessions awarded by the City. This policy and its implementation are known as the Small, Business Economic Development Advocacy Program (hereinafter referred to as “SBEDA Program”).
- 25.2 Consultant shall implement the plan (hereafter “SBEDA plan”) submitted with its proposal under the SBEDA Program for Small, African American, Minority and Women-owned Business Participation in this Agreement, thereby meeting the percentages for participation of those groups as submitted in its proposal. Consultant’s SBEDA plan, as submitted with Consultant’s proposal, is attached hereto and incorporated herein by reference as Exhibit \_\_\_\_\_. Consultant shall be in full compliance with this article by meeting the percentages listed in its proposal no later than 60 days from the date of execution of this Agreement, and shall remain in compliance throughout the term of this Agreement. Consultant further agrees to continue to make every effort to utilize businesses for subcontracting and supplying during the duration of this Agreement, as may be approved pursuant to this Agreement, which will meet the percentages submitted in its proposal.
- 25.3 Consultant shall maintain records showing all contracts, subcontracts, and supplier awards to SBE/MBE/AABE/WBE’s. Further, such records shall be open to inspection by City or its authorized agent at all reasonable times. Should City find that Consultant is not in compliance with this article, City shall give notice of non-compliance to Consultant. Consultant shall have 15 calendar days after notice of non-compliance to correct any and all deficiencies in compliance with this article. Failure to comply with this article and/or to correct any deficiencies within the time allotted shall be considered a material breach of this Agreement, for which this Agreement may be terminated in accordance with Article VII. Termination.
- 25.4 In all events, Consultant shall comply with the City’s Small Business Economic Development Advocacy Program, contained in San Antonio Ordinance No. 77758, and the amendments thereto. Said ordinances are incorporated herein for all purposes, as if fully set forth herein.

## **XXVI. PARTY REPRESENTATION**

- 26.1 The parties acknowledge and represent that this CONTRACT has been jointly drafted by the parties. No provisions or Articles of the CONTRACT will be interpreted or construed against any party solely because the party or its legal counsel drafted such provision or Article.

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**XXVII. LITIGATION EXPENSES**

- 27.1 Under no circumstances will the funds received under this contract be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against CITY or any other public entity.
- 27.2 During the term of this contract, if AGENCY files and/or pursues an adversarial proceeding against CITY, then, at CITY's option, this contract and all access to the funding provided for hereunder may terminate.
- 27.3 AGENCY, at CITY's option, could be ineligible for consideration to receive any future funding while any adversarial proceedings against CITY remains unresolved.
- 27.4 For purposes of this Article, "adversarial proceedings" include any cause of action filed by AGENCY in any state or federal court, as well as any state or federal administrative hearing, but does not include Alternative Dispute Resolution proceedings.

IN WITNESS OF WHICH THIS AGREEMENT HAS BEEN EXECUTED on this the \_\_\_\_\_ day of \_\_\_\_\_, 2004.

**CITY OF SAN ANTONIO**

\_\_\_\_\_

**BY:** \_\_\_\_\_

**TERRY BRECHTEL**  
**CITY MANAGER**

**BY:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**ATTESTED TO:** \_\_\_\_\_

**CITY CLERK**

**APPROVED:** \_\_\_\_\_

**CITY ATTORNEY**